

1880. In fact, the Keller family first settled in Tuscumbia around the time of its founding in 1820. Her grandfather was very involved in the railroad development. His son was Captain Arthur Henley Keller, a colorful confederate soldier, lawyer, and newspaper editor who wrote the history from which I quoted earlier. Capt. Keller was Helen's father.

When she was only 19 months old, she suffered acute congestion of the stomach and brain which left her deaf and blind. It was right behind the main house at Ivy Green at the water pump that Helen Keller, under the tutelage of her teacher Anne Sullivan, first learned that every object had a name. The word "w-a-t-e-r" was the first one she understood, but "teacher" became the most important word in her life.

Tuscumbia native Helen Keller contributed so much in her lifetime as an educator, author, and advocate for the disabled. She furthered the cause of improving education and general conditions for the handicapped and disabled around the world. During World War II, she visited the sick and wounded in military hospitals. Today, Ivy Green is host to an annual weekend festival celebrating the life and accomplishments of the "First Lady of Courage." Thousands of people from all across the world pay visits to see where Helen Keller lived as a child and where she learned to overcome obstacles to become an inspiring heroine. Each summer, thousands also attend live performances of the play "The Miracle Worker." This most famous daughter of Tuscumbia is a symbol of hope to those around the world who have ever doubted their ability to persevere and achieve. She passed away in 1968.

An integral part of the story of Tuscumbia is the founding of the Tennessee Valley Authority, one of the great achievements of the New Deal. Congress created TVA in 1933 and gave it the overall goal of conserving the resources of the valley region. Congress also directed TVA to speed the region's economic development and, in case of war, to use the Tennessee Valley's resources for national defense. It provided many much-needed jobs during the dark years of the Great Depression and contributed to our military success during World War II.

Congress established TVA after many years of debate on how to use the Federal Government's two nitrate plants and Wilson Dam at Muscle Shoals. During the ensuing 62 years, TVA has built dams to control floods, create electrical power, and deepen rivers for shipping. It has planted new forests and preserved existing ones, led the development of new fertilizers, and is now involved in solving the nation's environmental problems. The lakes created by damming the Tennessee River and its branches add to the beauty of our region. Besides providing electrical power, water recreation, and navigable waterways, TVA has been a major contributor in the economic

growth and development of this area and all of north Alabama.

Attracted by TVA electrical power, Reynolds Metals Co. was located at Listerhill, AL, and for more than 50 years, many Tuscumbians have been provided jobs there. During a somewhat similar period, the Robbins plants located in Tuscumbia have impacted the economy of the city and region.

During a very crucial period in the development of the Tennessee Valley, the northern part of Alabama was represented in Congress by a Tuscumbian, the Hon. Edward B. Almon. He was elected in 1914 and was very much involved in the congressional authorizations for Wilson Dam and the two government nitrate plants. He played an important role in passing the National Defense Act of 1916, which was highly instrumental in the development of this area. He was the Congressman when the TVA was created. He died a short time after the TVA act was signed into law, and was succeeded by another Tuscumbian, Archibald Hill Carmichael. He served during the most formative years of the Roosevelt era.

Earlier, I mentioned Brig. Gen. James Deshler, for whom Deshler Female Institute was named and whose name our high school bears. I should also mention that his father, Maj. David Deshler, played an important role in the development of Tuscumbia, particularly with regard to the railroads.

The name of Gen. John Daniel Rathner is also indelibly etched into the railroad history of Tuscumbia. He served as a director and officer of the Memphis and Charleston Railroad. While he was its president, it was merged with the East Tennessee, Virginia, and Georgia Railroad to become the Southern Railway System.

Tremendous contributions to the State's educational system came from 2 Tuscumbians, Dr. George Washington Trenholm and his son, Dr. Harper Councill Trenholm. And no history of Tuscumbia would be complete without mentioning Heinie Manush, a professional baseball player who was the first Alabamian to be enshrined in the Baseball Hall of Fame at Cooperstown, NY. He compiled a life-time batting average of .330.

I hope the celebrations and events over the last 3 weeks have brought Tuscumbians a better understanding of the city and area's history. As the 175th birthday of our beloved Tuscumbia comes to a close, and as we start speeding toward her 200th anniversary in the year 2020, I hope that each resident will take a moment to reflect upon how blessed they are to be from there.

I think back upon my life and career there and cannot imagine them having been anywhere else. It is a progressive little city that has changed a great deal over the years, but it is also one that has always retained its small-town charm and the many qualities that make it such a unique place to

live. Since her birthday 175 years ago, Tuscumbia has aged gracefully and improved with time. As I said back in March when I announced my retirement from the Senate, I will enjoy the remainder of my days in my hometown after I retire, for Tuscumbia is a wonderful little town to be from and the best little town in America to go home to. I wish Tuscumbia a happy birthday and look forward to enjoying many more with her well into the next century.

#### PRIVILEGE OF THE FLOOR

Mr. HEFLIN. Mr. President, on behalf of Senator SARBANES, I ask unanimous consent that Richard Ben-Veniste, Lance Cole, Neal Kravitz, Timothy Mitchell, Glenn Ivey, James Portnoy, Steven Fromewick, David Luna, Jeffrey Winter, and Amy Windt be granted floor privileges during consideration of Senate Resolution 199.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN addressed the Chair. The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SHUTDOWN II: THE RIGHT NOT TO PASS MONEY BILLS

Mr. BINGAMAN. Mr. President, we are now in the second Government shutdown of the year. This is the second one we have had in a month.

There have been many Government shutdowns in the past. In fact, I have been here in the Senate during some of those. But the shutdowns of this year seem very different than previous ones.

Prior to this Congress, the shutdowns of Government were short, and they were generally regretted by the congressional leaders. And, even when the Congress and the President continued to be at odds, those involved were eager to pass continuing resolutions to restart the Government and maintain basic services.

In this Congress we have a very different situation. In this Congress, the shutdowns are longer, and the Republican leadership in Congress sees the shutdown and the maintenance of the shutdown as an essential part of their strategy to gain leverage on the President in their negotiations with him about major policy issues.

Monday morning, when I was reading the Wall Street Journal, I saw a statement in the front page article. The statement was from Speaker GINGRICH. In reading that, I gained an insight into how we arrived at this year's shutdowns, and why these shutdowns are so different from those of the past.

The paper describes the strategy that Speaker GINGRICH devised to get his way in disagreements with the President. I will quote very briefly from that article.

"He"—that is Speaker GINGRICH—"would need to make heavy use of the only weapon at his disposal that could possibly match President Clinton's veto: The power of the purse."

Here is a quote from the Speaker.

"That's the key strategic decision made on election night a year ago," Mr. Gingrich says. "If you are going to operate with his veto being the ultimate trump, you have to operate within a very narrow range of change . . . You had to find a trump to match his trump. And the right not to pass money bills is the only trump that is equally strong."

Mr. President, I want to focus people's attention on this phrase "the right not to pass money bills." The Speaker talks about this right, this so-called right. The obvious question is whether this is an appropriate and an acceptable trump for the Presidential veto, as the Speaker seems to believe, or whether, on the contrary, it is an abuse of power, whether it is a proper use of the power vested in the congressional majority under the Constitution, or whether it is a perversion or destruction of the delicate system of checks and balances set out by the Framers of the Constitution.

I have done my best to analyze the Constitution in light of the Speaker's remarks, and it is my conclusion that the refusal to maintain funding for basic Government services is, in fact, an abuse of the power granted by the people to the Congress and the Constitution. I would like to take a few minutes to explain that reason.

The Founding Fathers set up a very delicate system of checks and balances. In article I, Congress is given authority to make laws in a wide range of areas. For instance, Congress is given exclusive authority to appropriate money.

Article I, section 9, reads:

No money shall be drawn from the Treasury, but in consequence of appropriations made by law.

The Framers recognized the need to have a check on irresponsible legislation by the Congress and they gave the President the power to veto.

Article I, section 7 contains that power. It says:

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law . . . be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it. . . .

Clearly, when there would be a disagreement between the Congress and the President, the Framers of the Constitution wanted to provide a method for reconciling the differences, and in this language, this language describing the veto, they established a procedure to determine which side should prevail. When in disagreement with the Congress, the President would veto the bill and return it to Congress. If no agreement were reached, the Congress could pass the bill again, and if they had the votes, the two-thirds votes in each House to override the President's veto, the bill would become law.

This system of checks and balances has served us reasonably well for 206 years, with both the Congress and the President generally agreeing to abide by the procedures set out in the Constitution. There was one major departure, and that was with the action by President Nixon to impound funds which the Congress had appropriated for spending. In that case, the final determination was that the President had, in fact, abused his power, that appropriations legally made and passed, in some cases over the veto of the President, prevailed over the contrary desire of the President to get his way. And just as the President in that case abused his power under the Constitution when he impounded funds that were legally appropriated over his objection, I believe that by shutting down Government services and maintaining those services shut down in order to gain leverage with the President on larger policy issues, the Congress is similarly abusing its authority under the Constitution.

Those who wrote the Constitution were focused on how to resolve legislative differences between the Congress and the President. The Supreme Court has recognized this focus of the Founding Fathers. Mr. Justice Jackson in *Youngstown Sheet & Tube Company versus Sawyer* stated:

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable Government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. 343 U.S. 579, 635 (1952).

The Founders of the country assumed that the failure of the President to sign legislation or the failure of Congress to enact legislation would be based on specific disagreements on what that legislation should contain, not on the desire of either the Congress or the President to extort concessions from the other on basic policy differences.

Mr. President, I use the word "extort" here because I believe it actively describes the current situation. The dictionary defines "extort" as "to wrest or wring from a person by violence, intimidation or abuse of authority."

I believe we have an attempt here to wrest or wring concessions from the President by abuse of authority. Mr. GINGRICH talks about Congress' so-called right not to pass money bills—in other words, the right to shut down the Government to get his way in disagreements with the President. He is not just asserting his right to disagree with the President on spending levels or levels of taxation. He is not just asserting the right to pass legislation reflecting his view of what is the right level of spending or taxation. He is not just asserting the Congress' right to pass those laws again over the President's veto if the disagreement continues.

No, here the Speaker's position goes well beyond the constitutional frame-

work for resolving disagreements between the Congress and the President. Here we have Mr. GINGRICH's majority in Congress arguing for major changes in authorizing legislation in Medicare, in Medicaid, and in numerous other areas of policy in seeking to get its way by, in fact, refusing to fund the Government itself, the entire Government or what is left of the Government to be funded, if the President does not bow to their wishes—not just refusing to fund the portion of the Government that the President wants to fund and the majority wants to defund but refusing to fund other broadly supported areas of Government activity.

This abuse of power or extorting of concessions from the President by refusing to maintain the basic services of Government is not part of the checks and balances that the Framers of the Constitution envisioned. They assumed that the maintenance of Government activities which both the Congress and the President deemed to be worthwhile would be supported by mutual consent of the two branches of Government. They did not anticipate that one branch would be willing to kill its own children unless the other branch agreed to give ground on policy disputes.

The obvious question is whether in fact this so-called right not to pass money bills is the ultimate trump or even the best trump. I suggest it is not. I suggest that the Founding Fathers put one more trump in this delicate balance of Government structure, and that is the trump of the people's vote every 2 years.

Abuse of power is always possible in politics and government, and the Framers of our Constitution were more keenly aware of the danger than any of us. In fact, the entire Constitution was written in reaction to the very abusive power which they suffered at the hands of the British monarchy.

For that very reason, they provided what is literally the ultimate—and certainly the best—trump, the right of the people to express their will every 2 years on who comprises the House of Representatives and on who holds one-third of the seats in the Senate.

Article I, section 2, and article I, section 3, set out that the House of Representatives shall be composed of Members chosen every 2 years and that a third of the Senate shall be elected every 2 years.

Time will tell whether the people of the country decide to use that ultimate trump to remedy what appears to me to be a clear abuse of the power granted by the people to the Congress by way of the Constitution. Until that time, this extortion, this abuse of power, should stop. It should stop today.

Today we should pass a continuing resolution to bring the Government back to full operation. Today we should pass a continuing resolution for a period long enough to allow careful negotiation on the budget and serious negotiation on the budget, not for the

2 or 3 days for which we were just advised by the majority leader we are likely to be passing a continuing resolution.

And today we should resolve that the power not to pass money bills, which the Congress clearly has—and I do not dispute that Congress has that power, but that power should never become or never be seen as a right not to pass money bills, as Mr. GINGRICH asserts. Today we should fully restore the checks and balances between the President and the Congress which the Constitution of the United States contemplated at the time of the founding of the Republic.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will read the roll.

The legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

#### DIRECTING THE SENATE LEGAL COUNSEL TO BRING A CIVIL ACTION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Senate resolution 199, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 199) directing the Senate Legal Counsel to bring a civil action to enforce a subpoena of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to William H. Kennedy, III.

The Senate proceeded to consider the resolution.

#### PRIVILEGE OF THE FLOOR

Mr. D'AMATO. Mr. President, I ask unanimous consent that the privilege of the floor be granted to staff during consideration of Senate Resolution 199, whose names shall be submitted to the desk at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The staff names are as follows:

Alice Fisher, Chris Bartolomucci, Jennifer Swartz, David Bossie, Vinezo Deleo, Richard Ben Veniste, Lance Cole, Neal Kravitz, Tim Mitchell, Jim Portnoy, Glenn Ivey, Steve Fromewick, David Luna, Jeffrey Winter, and Amy Wendt.

#### PRIVILEGE OF THE FLOOR

Mr. SARBANES. Mr. President, I ask unanimous consent that Joanne Wilson, a congressional fellow with Senator SIMON's office, be granted privileges of the floor for the consideration of Senate Resolution 199.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, I regret that we find ourselves here today. I must say that I believe my colleague, Senator SARBANES, has made every reasonable effort to see if we could resolve

this problem. And, indeed, in the past we have been able to resolve many of the outstanding issues with our professional staff and counsel working together—even some that might be considered contentious. I believe this one is beyond the control of my friend and colleague on the other side. We have made every reasonable effort to attempt to settle this matter. That is a question of the enforcement of a subpoena on Mr. Kennedy for his notes—William Kennedy was formerly associated with the Rose law firm, former associate counsel in the White House—regarding a meeting of November 3, 1993.

I summarize that because it is well known. To go over every single aspect of it, I think, would draw this out unnecessarily.

It was but a short time ago that my colleague and friend, Senator SARBANES, requested that I speak to Chairman LEACH in the House of Representatives in regard to an offer that was made, apparently, to the Speaker in regard to a possible settlement of the manner in which to produce these notes. Let me first say that I find the conduct of the White House to be absolutely one based upon delay and obfuscation—delay, delay, delay, delay.

Let me tell you, with some specificity, what I am talking about. We asked for this information, and information was covered going back to August. We had numerous conferences with the White House with regard to not only this, but all of the relevant information. Throughout these proceedings, we have had the continued posture, publicly, of cooperation and, yet, when it came to producing relevant material evidence that goes to the heart of the matter, we have had delay.

This is not the first time. Only when the issuance, or the threat of the issuance, of a subpoena and bringing this public would we get cooperation—in numerous instances. But this one takes the cake. Let me tell you why. Because after our August 25 request, ensuing meetings took place in September, October, and November. On November 2, it gets down to specificity as it relates to these notes of Mr. Kennedy. November 2. Here we are now in December. It comes to the issue of privilege for the first time and, remember, this is the same administration, and these people are working for the same President, who says, "I will go to great lengths, and I cannot imagine raising the issue of privilege." And privilege is raised.

Now, clearly, in looking at the legislative history of the Congress of the United States as it relates to the Executive, there has never been an instance where a committee, in its capacity of investigating, has been turned down or has the claim of privilege succeeded in thwarting that committee's request for documents. Never. There is a history on that. Clearly, bringing up the issue of privilege in this case is very, very

doubtful, very, very tenuous. But I suggest, Mr. President, it flies in the face of what Mr. Clinton, the President of the United States, promised and said publicly: "We will cooperate." What sense is it if you have 50,000 pages of documents? You can give us the Federal Registry. So what? You can give us a million pages. But when it comes to the relevant information that we request, there is repeated delay, delay, obfuscation.

That is what we have had to deal with. This is a perfect example. Only when we say that we would vote these subpoenas, move this, do we begin to get any kind of response. Let me say that it is absolutely disingenuous, it is wrong, and it is a contrivance for the White House to say that it has offered us conditions by which to accept this agreement. The fact of the matter is, those conditions that they have added to it are over and above what was reasonable, and that back on November 2—again, almost 6 weeks ago—we said to them, "You do not have to concede anything. Give us the information and indeed it will not be deemed a waiver." So we offered that to them.

The whole month of November goes by, right up until the recess this time, and delay, delay, delay. They come back and they say, "Oh, by the way, we will be willing, if you will agree that this is not a waiver of privilege, first, and then attach other conditions—conditions to say that we, the Senate, should get approval from other bodies."

Now, I do not have any objection and, indeed, would suggest and recommend that other bodies have no reason—be they my colleagues in the House or investigatory bodies, or the independent counsel—to go along with this. But to make this public and then to claim that they have conceded something that we offered weeks ago is wrong. Spin doctors. They are very good at this spinning.

In an effort, just a little less than an hour ago, to come about some kind of suggestion, some kind of resolve of this matter, my friend and colleagues suggested that I reach out to Chairman LEACH, chairman of the House Banking Committee, which is also conducting its investigation into the matter known as Whitewater/Madison, and related matters.

I said that I would, and I did. I have seen now for the first time a letter of response or a letter from Chairman LEACH to Speaker GINGRICH. I do not know if my friend and colleague has a copy of this letter. I will make a copy available. We just received this by fax at 10:30. Mr. President, I ask unanimous consent that the complete letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows: